



Attachment A

DECISION RECORD

Request Details

FOI Request FA 16/10/00180
File Number ADF2016/57019

Scope of request

- On 4 October 2016 you requested:
 - "PCG meeting minutes for October, November and December 2015" [Item 1]
 - "mould report by Pure Protect" [Item 2]
 - "the clearance certificate" [Item 3]
 - "documents relating to financial implications of the mould situation" [Item 4]

Authority to make decision

- I am an officer authorised under s.23 of the FOI Act to make decisions in respect of requests to access documents or to amend or annotate Departmental records.

Information considered

- In reaching my decision, I have considered the following:
 - the terms of your request
 - the *Freedom of Information Act 1982*
 - the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act (the Guidelines)
 - departmental documents
 - consultation with the relevant business areas

Summary of decision

- I have decided to release three documents that fall within **Item 1** of your request. These documents are enclosed at Attachment B.
- My decision includes withholding certain parts of the documents on the basis that those parts are exempt under Section 47G(1)(a) [Public interest conditional exemptions-business] of the FOI Act. I have also removed certain irrelevant material in accordance with section 22(1)(a)(ii).
- In relation to **Items 2, 3 and 4** of your request, I have made a decision to refuse access under section 24A(1)(b)(ii) [Requests may be refused if documents cannot be found, do not exist or have not been received] of the FOI Act.

Assessment of conditional exemption

7. Section 47G(1)(a) of the FOI Act allows for condition exemption to be applied to documents containing information concerning business or professional affairs of the business, commercial or financial affairs of an organisation, where disclosure would or could reasonably be expected to unreasonably affect a business in respect of its lawful business, commercial or financial affairs.

Business and financial affairs information

8. I find that the documents exempted under section 47G(1)(a) contain information concerning the business and financial affairs of a third party. The nature of this information relates to import licence commissions.

Adverse effect

9. I find that disclosure of this information would, or could reasonably be expected to, adversely affect that third party in respect of their lawful business affairs. I have determined that the adverse effect to the third party would result in allowing competitors to potentially calculate the value of the contract instalments to underquote or under-price services in the future. In addition, disclosure would reveal particular contract management practices relating to the business in question, which could result in an unreasonable and adverse effect on business.

The adverse effect is unreasonable

10. In finding that the adverse effect would be unreasonable, I have considered the information is not publicly known and the disclosure of the exempt material would have an adverse effect in relation to the business and financial affairs of the business.
11. I therefore find that the documents meet the requirement of the conditional exemption under section 47G(1)(a) of the FOI Act.

Assessment of public interest test

12. Conditionally exempt matter must be released unless, in the circumstances, access to the documents at this time would, on balance, be contrary to the public interest (section 11A(5) of the FOI Act). As the Guidelines state at paragraphs 6.27:

To conclude that, on balance, disclosure of a document would be contrary to the public interest is to conclude that the benefit to the public resulting from disclosure is outweighed by the benefit to the public of withholding the information.

13. In balancing the public interest in this case, I have considered the he following factors for and against disclosure:

Factors in favour of disclosure

- promote the objects of the FOI Act

Factors against disclosure

- would not promote effective oversight of public expenditure
- would not inform debate on a matter of public importance
- unreasonably interfere with the privacy of third parties
- reasonably be expected to harm the interests of an individual or group of individuals

- contrary to the need to preserve reasonably held expectations of confidentiality
- unreasonably interfere with the private business affairs
- reasonably be expected to prejudice the competitive commercial activities of an agency

Finding on the public interest

14. I acknowledge that release of the conditionally exempted information would promote the objects of the FOI Act, by facilitating and promoting public access to information. However, I am not satisfied that it would promote oversight into public expenditure or inform debate on a matter of public importance.
15. I am satisfied that release of the conditionally exempt information would adversely impact the commercial and financial affairs of the business owners to which the information relates. The release of such material could reasonably be expected to impact sales, or trust placed in, and their business products or services.
16. Further, I consider that the disclosure of the conditionally exempt information may prejudice the competitive commercial activities and management functions of the Department and agencies within the Government of Nauru.
17. On balance, I consider that the benefits of disclosing the conditionally exempt information is outweighed by the benefit to the public of withholding the information. I conclude that the release of the conditionally exempt information at this time, would be contrary to the public interest.
18. Accordingly, I have decided that the documents are exempt in part under s47G(1)(a) of the FOI Act.

Irrelevant material

19. Section 22(1)(a)(ii) of the FOI Act allows an agency to withhold material from a document if the information would reasonably be regarded as irrelevant to an applicant's FOI request.
20. I find that the documents relevant to your request contain material such as names, initials and contact details of Departmental and third party staff, which is reasonably regarded as irrelevant to the scope of your FOI request. As such, I have withheld that material from disclosure.

Items 2, 3 and 4 of your request

21. Under Section 24A(1) of the FOI Act, requests may be refused if documents cannot be found, do not exist or have not been received, on the grounds that all reasonable steps have been taken to find the documents.

22. Consultation occurred within the Department regarding the information you are seeking. Officers from the Detention Services Division conducted searches and confirmed that no documents exist that fall within **Items 2, 3 or 4** of your request.
23. Further advice provided by Detention Services Division concluded that Pure Protect has not been engaged by the Department or its contractors to undertake any work relating to the Regional Processing facilities. The Department does not hold any clearance certificate for Pure Protect, nor any reports authored by Pure Protect or documents showing financial implications within the context of the request.
24. I am satisfied that all reasonable steps have been taken to find the documents requested, however no documents have been located and there has been confirmation that there are not documents in existence that fall within **Items 2, 3 or 4** of your request. I therefore refuse access under s24A(1) of the FOI Act.

Legislation

25. A full copy of the FOI Act is available for your reference from www.legislation.gov.au/Browse/ByTitle/Acts/InForce/0/0/Principal
26. If you are unable to access the legislation through this website, please contact our office for a copy.



Authorised Decision Maker
Department of Immigration and Border Protection
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15 August 2017